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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 81

JULIAN RILEY and HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,
Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED, ET AL,
Respondents.

BRIEF ON BEHALF OF PETITIONERS

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OPINIONS BELOW

The opinion of the Supreme Court of Delaware is reported in 16 Atl. (2d) 772, and appears in the Record at Pages 203-232. The opinion of the trial court is reported in 8 Atl. (2d) 511 and is set out in the Record at Pages 150-181. The opinion of the trial court on a motion for judgment notwithstanding answer is reported in 2 Atl. (2d) 290, and appears in the Record at Pages 134-143.

JURISDICTION OF THIS COURT

This case is before the Court on a writ of certiorari granted May 26, 1941. (R. 246) pursuant to Section 237 (b) of the Judicial Code (28 U. S. C. A., Sec. 344 (b)).

STATEMENT OF THE CASE

The question is whether the Supreme Court of Delaware gave full faith and credit to a judgment of the Court of Ordinary of Fulton County, Georgia. It arose in an interpleader suit instituted by Coca-Cola International Corporation, a Delaware corporation, in the Chancery Court for New Castle County, Delaware, against petitioners and The New York Trust Company, as Temporary Administrator by appointment of a surrogate's court in New York in *ex parte* proceedings. The interpleader suit involved the succession to a decedent's title to stock in the Delaware corporation, rival demands for a transfer of the stock having been made on the corporation by petitioners, as the Executors named in decedent's Will, and by said Administrator. There being no creditor in Delaware and no question as to local administration, the respective claimants were required to interplead between themselves as to their respective claims to the stock, consisting of 626 shares of the Class A and 626 shares of the common stock of Coca-Cola International Corporation owned by Julia M. Hungerford at the time of her death (R. 12-13).

Petitioners, in their pleading in the nature of a bill of complaint (R. 13-50, 91-112) asserted title to the stock by virtue of a judgment of the Court of Ordinary of Fulton County, Georgia, as finally affirmed by the Supreme Court of Georgia. The Georgia judgment was rendered in *inter partes* probate proceedings in which all persons interested in the succession (including decedent's husband), either as beneficiaries under the Will or as distributees in the event of intestacy, were *served personally*. The Georgia judgment established that decedent was domiciled in Fulton County, Georgia, at the time of her death, admitted the Will to probate and established Fulton County, Georgia, as the seat of general or domiciliary administration of

the estate. The judgment was affirmed by the Supreme Court of Georgia in an opinion holding that the probate was a general probate and that the finding of domicile was essential to the jurisdiction of the Fulton County Court of Ordinary. (*Hungerford v. Spalding*, 183 Ga. 547, 189 S. E. 2; R. 105-110).

In the probate proceedings, Hungerford (decedent's husband) filed a caveat alleging want of testamentary capacity and also that decedent was domiciled in the State of New York at the time of her death (R. 33-34, 38-39). After hearing, judgment was entered overruling the caveat, admitting the Will as duly probated in solemn form and adjudging that decedent died domiciled in Fulton County, Georgia (R. 34). The Executors thereupon qualified as general or domiciliary representatives of the estate (R. 32-33). Upon appeal by Hungerford to the Superior Court of Fulton County, Georgia (R. 40), his caveat was tried *de novo* (R. 17-18). A jury found that decedent had testamentary capacity and was domiciled in Fulton County, Georgia, at the time of her death and judgment was entered accordingly (R. 48-49). A motion by Hungerford for a new trial was overruled (R. 40) and he then appealed to the Supreme Court of Georgia, which court affirmed the judgment of the Superior Court (R. 105-110; *Hungerford v. Spalding*, 183 Ga. 547, 189 S. E. 2). The principal ground of error urged by Hungerford was that the trial court should not have made a finding as to decedent's domicile, but the Supreme Court of Georgia held, *inter alia*, that the finding was proper because the jurisdiction of the Fulton County Court of Ordinary depended upon decedent's domicile in that county at the time of her death.

While the Georgia litigation was in progress Hungerford instituted *ex parte* proceedings in a surrogate's court in New York, which resulted in the appointment of The New

York Trust Company as Temporary Administrator (R. 63-74). The Tax Commissioner of New York appeared in the proceeding in the surrogate's court to protect the alleged claims of that State to inheritance or succession taxes (R. 76-81). After the decision of the Supreme Court of Georgia the surrogate's court appointed the New York Trust Company as Administrator c.t.a., also in *ex parte* proceedings (R. 126-127, 131-133), and the Administrator c.t.a. was then made a party to the Delaware interpleader proceedings, adopting the contentions of the Temporary Administrator that decedent had died a resident of New York and therefore it was entitled to the Delaware stock.

At the trial in the Delaware court, petitioners introduced in evidence duly authenticated copies of the Georgia judgment and proceedings and objected to the introduction of any evidence as to decedent's domicile, on the ground that the Georgia judgment was entitled to full faith and credit and established the right and title of the Executors to the stock. The trial court admitted evidence of both sides on the subject of domicile, subject to the objection of petitioners, reserving for later decision the questions raised by petitioners as to the effect of the Georgia judgment. Subsequently the trial court filed an opinion finding that decedent died a resident of Fulton County, Georgia (R. 150-181); and that it therefore was unnecessary to pass upon the effect of the Georgia judgment, and the trial court made no decision on the question.

Upon appeal by the Administrator c.t.a. to the Supreme Court of Delaware that court reversed the trial court. Instead of first determining whether the Georgia judgment was conclusive upon the question of domicile, the Delaware Supreme Court reviewed the evidence and reversed the trial court on the question of fact as to decedent's residence and domicile at the time of her death, holding that

the evidence showed that decedent died domiciled in New York. *On the basis of that finding* the court held that the Administrator c.t.a. was entitled to the stock and that the Georgia judgment was not binding upon the Administrator c.t.a. because it was not a party to or in privity with a party to the Georgia proceedings. The decision was by three justices. One justice dissented and another justice who sat during the argument did not participate in the decision. A motion for reargument (R. 232-235) urging that the court's decision denied full faith and credit to the Georgia judgment was overruled without opinion (R. 235) and a final decree was entered on February 14, 1941 (R. 236-240).

Petitioners then filed in this court a petition for writ of certiorari to the Supreme Court of the State of Delaware. This case is now here upon the granting of their petition.

SPECIFICATION OF ERRORS

The Supreme Court of Delaware erred in holding that the Georgia judgment did not conclusively establish the title of the Executors to the stock in question for administration as the domiciliary or general representatives of the estate of Julia M. Hungerford, and that the Georgia judgment was not binding on the New York Administrator in a dispute as to the title to the stock for administration. The opinion and decree of the Supreme Court of Delaware failed to give the full faith and credit to which the Georgia judgment was entitled in the courts of Delaware under Article IV, Section 1, of the Constitution of the United States, and the Acts of Congress pursuant thereto (R.S. 905; 28 U.S.C.A. 687).

SUMMARY OF ARGUMENT

1. The Georgia judgment was rendered by a court which had jurisdiction over the subject matter and also jurisdiction over the parties by personal service.

2. Since all persons who could have any possible interest in the succession were parties to the Georgia judgment, that judgment was binding upon all the world in any contest relating to the succession to the title to any personalty of decedent.

3. The litigation in the Delaware courts involved the succession to the title to personalty of the decedent, consisting of shares of stock of a Delaware corporation. The Georgia judgment was therefore conclusive and entitled to full faith and credit in the Delaware courts.

4. Where a court's jurisdiction depends upon a particular fact and the court determines that factual question, the parties are bound and the judgment is entitled to full faith and credit in other states.

> The Supreme Court of Georgia had held that the jurisdiction of the Georgia court depended upon a determination of the factual issue of domicile and that the court had jurisdiction to determine that issue.

5. The Delaware courts did not give full faith and credit to the Georgia judgment by attempting to readjudicate the question of decedent's domicile (over the objection of the Executors) in a contest involving nothing more than the succession to the title to personalty of decedent.

6. The Georgia judgment was binding on the New York Administrator in a contest in Delaware for succession to the title to personalty of the decedent, although the New York Administrator was not a party to the judgment, because

(a) The New York Administrator was not entitled to be a party;

(b) A party to the Georgia proceeding could not have an administrator appointed in New York, in *ex parte* proceedings, during the progress of the Georgia proceeding, and thereby in effect nullify, in other states, the decision of the Georgia courts upon the factual issue of domicile;

(c) The New York Administrator acquired no interest in the succession above and unrelated to the interests of a distributee and neither the State of New York nor anyone else claiming as a creditor is affected by the finding of a domicile in the Georgia proceeding;

(d) Since a creditor is not entitled to be heard on the probate of a Will, he cannot, after the succession has been determined, dispute the title or right of possession of the personal representative whose title has been established in the probate proceeding;

(e) Since the Georgia judgment is binding upon all possible distributees, it is also binding on the New York Administrator as representative of a distributee, and, under the circumstances, the New York Administrator is the same person in law as decedent's husband, one of the distributees, who initiated the proceedings for the appointment of the New York Administrator, he having been a party to and participated in the Georgia litigation to its final conclusion.

7. The Georgia judgment determined that the Georgia administration was domiciliary and not ancillary. Such a judgment is conclusive where all persons having any possible interest as distributees of the estate are parties. A creditor is not a distributee.

8. The Delaware Supreme Court did not first determine whether the Georgia judgment was conclusive, as was its

duty, but examined the question of domicile and then proceeded to hold that the New York Administrator was entitled to the stock *because of its finding of a New York domicile for decedent.*

ARGUMENT

Under the full faith and credit clause of the federal constitution (Section 1, Article IV), as construed by this Court (*Roche v. McDonald*, 275 U. S. 449, 451), a judgment of a State court which had jurisdiction of the parties and the subject matter is entitled in the courts of every other State to the same credit, validity and effect which it has in the State where rendered and is equally conclusive upon the merits. Upon the introduction in evidence of the duly authenticated copies of the Georgia proceedings and judgment, the only inquiries open to the Delaware court were whether the Georgia court had jurisdiction of the parties and subject-matter and the effect of such a judgment in Georgia.

The Georgia Court Had Jurisdiction and Its Judgment Determined the Succession

The court which rendered the Georgia judgment had jurisdiction

(a) over the subject-matter, it being a court of general jurisdiction of matters relating to probate and to the estates of decedents.

Veatch v. Rice, 131 U. S. 293;

Maybin v. Knighton, 67 Ga. 103

Tant v. Wigfall, 65 Ga. 412

(b) over the parties, personal service having been obtained upon the parties thereto.

The Georgia judgment is binding upon all the world upon any question relating to the succession to the title to

any personalty of the decedent, because the parties to the judgment include all persons who could have any possible interest in the succession.

The litigation in the Delaware courts involved the question of the succession to the title to certain shares of stock. (The right of the State of New York to claim estate or inheritance taxes was not involved, and it is not contended that the Georgia judgment bars the State of New York from making any such claim, based upon an alleged domicile of the decedent in New York). The Georgia judgment was therefore conclusive upon the Delaware courts, the Executors having claimed the right to have full faith and credit accorded to the Georgia judgment as required by the federal constitution.

The Delaware Courts, in Examining Question of Domicile, Failed to Give Full Faith and Credit to Georgia Judgment

By examining the question of decedent's domicile and admitting evidence thereon (over the objection of the Executors), the Delaware courts failed to give full faith and credit to the Georgia judgment because the determination by the Georgia courts that decedent was domiciled in Georgia at the time of her death was conclusive whenever and wherever any question relating to the succession and based upon an alleged domicile elsewhere was raised.

Thormann v. Frame, 176 U. S. 350

Overby v. Gordon, 177 U. S. 214

Tilt v. Kelsey, 207 U. S. 43

Burbank v. Ernst, 232 U. S. 162

Baker v. Baker, Eccles & Co., 242 U. S. 394; 162 Ky. 683; 173 S. W. 109; L.R.A. 1917C, 171

Thomas v. Morrisett, 76 Ga. 384

In Re Fischer's Est., 118 N. J. Eq. 599; 180 Atl. 633

In Re Willett's Appeal, 50 Conn. 330

The Georgia courts had before them all possible distributees of the decedent's estate, and hence it was possible to have a single controlling decision upon the succession. This Court, in *Baker v. Baker, Eccles & Co.*, supra, considered the question posed by counsel in that case as to how it would be possible to determine judicially the domicile where an intestate left personalty in different states with different laws of distribution and with possible distributees residing in different jurisdictions, and said (Page 404):

> ". . . The answer is clear; Unless all possible distributees can be brought within the jurisdiction of a single court having authority to pass upon the subject-matter, either by service of process or by their voluntary appearance, it must in many cases be impossible to have a single controlling decision upon the question. . . ."

We believe it worth while to outline the facts involved in the leading cases.

In *Baker v. Baker, Eccles & Co.*, supra, the wife was appointed administratrix of her husband's estate by an *ex parte* judgment of a court of Tennessee. Decedent owned certain shares of stock in Baker, Eccles & Co., a Kentucky corporation, and a claim for several thousand dollars against that concern. The Tennessee court directed the wife, as administratrix, to deliver and convey this property to herself as sole heir-at-law, the debts having been paid. Under the Kentucky law the wife and mother of an intestate, dying without children, shared the estate equally. The mother applied for administration in Kentucky and was appointed

administratrix. The Kentucky administration was *ex parte* as to the widow.

The widow, individually and as administratrix of her husband, instituted a suit in Kentucky, resulting in the judgment under review. Baker, Eccles & Co. was the defendant. The mother intervened in that cause. The Kentucky court determined the issue of domicile as a factual matter, finding that the deceased was a resident of Kentucky, and awarded one-half of the stock to the widow and one-half to the mother. The fact of domicile was inquired into by the Kentucky court for the reason that the Tennessee judgment had no extra-territorial effect and was not entitled to full faith and credit as against the mother who had not been served and had not appeared in the Tennessee proceedings. The judgment of the Kentucky court, appointing the mother as administratrix, was not binding upon the widow for like reasons.

Had there been personal service in either of these cases against the other claimant the matter of domicile would have been adjudicated and not open to further inquiry.

In *Thomas v. Morrisett*, supra, the succession was determined by probate proceedings in Alabama in which all of the distributees were before the court. The domicile of the decedent was determined to be in Alabama. While that judgment was being appealed by certain of the heirs to the Supreme Court of Alabama, these heirs, residents of Georgia, instituted *ex parte* administration proceedings in the State of Georgia upon the ground that the decedent at the time of her death was a resident thereof. An administrator was appointed and took possession of certain personal property having a situs in the State of Georgia. The judgment of probate was affirmed by the Alabama Supreme Court and the executor applied to the *ex parte* administrator in

Georgia to turn over the assets of the estate in his hands which the Supreme Court of Georgia ordered be done, holding that the administrator appointed in Georgia was bound by the judgment of probate in Alabama, although not a party thereto.

The court's opinion in *In Re Fischer's Estate*, 118 N. J. Eq. 599, 180 Atl. 633, contains an excellent statement of the principles of law applicable in a situation where the domicile of the decedent is in dispute. Letters of administration were granted to the husband of the deceased in New Jersey on his representation that the decedent was a resident of New Jersey. This proceeding was *ex parte* and decedent's brother was not made a party. The brother instituted proceedings in New York to which all persons interested in the succession were made parties, claiming New York was decedent's domicile. The question of domicile was determined by the New York courts, and the New Jersey court on an application to revoke the letters of administration issued by it, granted the application, holding:

> "The determination of that issue as to domicile, by that court (the New York court) having jurisdiction of the subject-matter and of those parties, precludes any further legal dispute between them as to that issue."

If the decision of the Delaware Supreme Court in the instant case were sound, the New Jersey court would have determined for itself the domicile of the decedent.

The case of *In Re Willett's Appeal*, 50 Conn. 330 (1882) involved facts quite similar to those in the *Fischer* case, and the decision was to the same effect. There was an *ex parte* proceeding in Connecticut followed by an *inter partes* proceeding in New York in which the question of domicile

was determined to be New York. The Connecticut court held that, as the question of domicile had been determined in New York by a court of competent jurisdiction, that judgment concluded all the parties thereto.

The foregoing authorities establish that Hungerford and his representatives are bound by the proceedings in Georgia.

In the brief of counsel for the Administrator filed in opposition to the petition for certiorari, they challenged the statement that the New York Administrator was appointed in *ex parte* proceedings and seek to bind the other distributees, resident of Georgia, and the Executors by reason of notice having been served upon them in the State of their residence. This was the exact situation that existed in the case of *Baker v. Baker, Eccles & Co.*, supra. This Court disposed of that contention in the following language:

> "But it is now too well settled to be open to further dispute that the 'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment in personam to extra-territorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound" (Page 401),

and on Page 403:

> "And to assume that a party resident beyond the confines of a State is required to come within its borders and submit his personal controversy to its tribunals upon receiving notice of the suit at the place of his residence is a futile attempt to extend that authority and control of a State beyond its own territory."

Likewise this Court emphasized the distinction between a judgment *in rem* and a judgment *in personam* in so far as the succession was to be determined (Page 400):

> "How is the fact of decedent's domicile to be judicially ascertained as a step in determining what law is to govern the distribution? Obviously, if fundamental principles of justice are to be observed, the ascertainment must be according to due process of law; that is, either by a proceeding in rem in a court having control of the estate, or by a proceeding in personam after service of process upon the parties to be affected by the judgment."

This distinction is recognized in the cases already discussed, *In Re Fischer's Estate*, 118 N. J. Eq. 599, 180 Atl. 633, *In Re Willett's Appeal*, 50 Conn. 330, and *Thomas v. Morrisett*, 76 Ga. 384. The cases of *Thormann v. Frame*, 176 U. S. 350, and *Overby v. Gordon*, 177 U. S. 214, involve situations where the succession was being settled in a proceeding *inter partes*. An *ex parte* judgment of general administration was offered in evidence in each case and excluded. Certainly in view of that fact such a judgment could not challenge the title of the personal representatives as to personal property so settled in a proceeding *inter partes*.

In this connection let us point out that in *Overby v. Gordon*, as in *Thomas v. Morrisett*, the *ex parte* administrator, while the *inter partes* proceeding for administration was pending, took possession of assets of the estate and removed the same from the District. This Court, in pointing out that the question was not before it of whether or not those making payments to such *ex parte* administrator were protected, had this to say (Text 229):

> "Further, in the light of the decision of the Supreme Court of Georgia in the case of *Thomas v. Morrisett*, 76 Ga. 384, and an analogous decision by the Supreme Court of Errors of Connecticut, in *Willett's Appeal from Probate*, 50 Conn. 330, it would seem altogether probable that the DeKalb County Court, upon application made to it, will order its appointee to surrender to the administrator appointed in the District of Co-

lumbia the assets which were by the former removed from the District during the pendency therein of the proceedings for administration."

Full Faith and Credit Applies to Determination of Jurisdictional Facts

Where the jurisdiction of a court depends upon the existence of a particular fact, and the court determines that factual question, the parties to the proceeding are bound by that determination and the judgment is entitled to full faith and credit in other states.

Davis v. Davis, 305 U. S. 32

Sovereign Camp of Woodmen of the World v. Bolin et al, 305 U. S. 66

Stoll v. Gottlieb, 305 U. S. 165

Sunshine Coal Company v. Adkins, 310 U. S. 381, 403

Treinies v. Sunshine Mining Co., 308 U. S. 66, 78

Also other cases cited above.

The statement of this Court in *Stoll v. Gottlieb*, supra, is equally applicable to the present case:

> "Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."

Jurisdictional Fact of Domicile Determined in Georgia Proceedings

The Supreme Court of Georgia held that the jurisdiction of the Georgia courts to render the judgment depended upon a determination of the factual issue of domicile and that the court had jurisdiction to determine that issue, saying:

> "The application alleged that the Testatrix resided in Fulton County, and, under this and other allegations made, must be construed as an application to probate the Will generally as a Will of a person domiciled in that county. *It was thus necessary in order to admit the Will to probate to show that the decedent was domiciled in Fulton County at the time of her death; otherwise the Court of Ordinary would not have had jurisdiction.*" (R. 108; italics ours).

The Georgia Judgment Binding on New York Administrator

The Georgia judgment was binding upon the New York Administrator in the contest in Delaware involving the succession to the title to assets of the estate, notwithstanding that the New York Administrator was not a party to the Georgia proceedings and judgment, because it was not entitled to be a party thereto and all persons interested in the question of the succession were parties. When decedent's husband, himself a party to the Georgia litigation, and during the progress of the Georgia litigation, had the Administrator appointed in New York in *ex parte* proceedings, he could not thereby in effect nullify, in other states, the decision of the Georgia courts upon the factual question of domicile that was in issue and upon which the jurisdiction of the Georgia courts depended. The New York Administrator acquired no interest in the succession over, above and unrelated to the interest of any possible

distributee; and neither the State of New York nor anyone else claiming as a creditor is affected by the finding of domicile in the Georgia proceedings. A creditor or tax claimant is not entitled to be heard on the probate of a Will and hence, after the succession has been determined, cannot dispute the title or right of possession of the personal representative whose title has been established in the probate proceeding.

Hooks v. Brown, 125 Ga. 122, 53 S. E. 583

Dunsmuir v. Scott, 217 Fed. 200

Tilt v. Kelsey, 207 U. S. 43

Schouler on Wills, Vol 2, P. 846, Sec. 746

It follows, therefore, that since the Georgia judgment is binding upon all possible distributees, including Hungerford, because he was a party to and participated in the Georgia litigation, it is also binding upon the New York Administrator as representative of Hungerford. Under the circumstances, the New York Administrator is the same person in law as Hungerford. In *Chicago, Rock Island & Pacific Rwy. Co. v. Schendel*, 270 U. S. 611, this Court refused to distinguish between the widow who was sole heir, and the administrator, holding the latter was bound by a judgment to which the former was a party, on the ground that they were in legal effect the same. Said this Court (P. 620):

> "Identity of parties is not a mere matter of form, but of substance. Parties nominally the same may be, in legal effect, different. Bigelow on Estoppel, 6th ed. 145; and parties nominally different may be, in legal effect, the same."

See also

Sunshine Coal Company v. Adkins, 310 U. S. 381, 402.

Citing and following the *Schendel* case are:

Keith v. Willers Truck Service, Inc., 266 N. W. 256 (S.D.); 104 A. L. R. 1471

Lucy Haines Gibson v. Solomon, 136 Ohio St. 101; 23 N. E. (2d) 996; 125 A. L. R. 903

St. Louis-S. F. R. Co. v. Stuckwish, 137 Okla. 251; 279 Pac. 683

Directly in point are the cases of:

Thomas v. Morrisett, 76 Ga. 384

In Re Willett's Appeal, 50 Conn. 330

In Re Fischer's Estate, 118 N. J. Eq. 599, 180 Atl. 633

This Court recently denied certiorari in *Roberts v. Bathurst*, 112 Fed. (2d) 543 (5 C. C. A.) (certiorari denied 311 U. S. 709), a case almost identical in principle with the instant case and which held that the personal representative had no independent status from that of the sole beneficiary, and that a judgment binding on the sole beneficiary was binding upon the Administrator.

Counsel for the Administrator, in their brief in opposition to the petition for certiorari assert that a judgment against the heirs or distributees is not *res adjudicata* as to the personal representative, citing a number of cases including *Buchan v. Williamson*, 142 Ga. 198, 82 S. E. 548.

Their statement is incorrect if it is intended by the citation of the case of *Buchan v. Williamson* to create the idea that the Supreme Court of Georgia has ever so held. On the contrary, that court, in the case of *Thomas v. Morrisett*, 76 Ga. 384, (see Pp. 11 and 12) held exactly the opposite.

Even prior to the *Morrisett* case, the Georgia Supreme Court, in *Hardaway v. Drummond*, 27 Ga. 221, had laid down the rule:

> "A recovery by or against the heirs at law may be pleaded in bar to a suit brought by the administrator of the estate for their benefit, there being no debts due or owing by the intestate."

The case of *Buchan v. Williamson* involved a state of facts totally different. A suit was instituted by the heirs to recover a parcel of land. There was no personal representative qualified to sue. An administrator was later appointed. Under the laws of Georgia, real estate is liable for the debts of the decedent (Section 113-901, Georgia Code Ann.). The administrator, thus representing both heirs and creditors, brought suit to recover the land. The Georgia Supreme Court held that the previous suit did not bind the creditors of the estate and, therefore, the administrator was not bound. All of the cases cited by counsel for the administrator are of the latter type; that is, they involve claims against the estate or proceedings to recover assets of the estate involving in both instances the rights of creditors in addition to the rights of heirs.

The discussion in 34 *C. J.* 1038-1039, also cited, clearly draws the distinction between a judgment settling the succession and one involving a controversy in which creditors are interested.

Counsel for the Administrator fail to recognize the important distinction between the rule applicable where the succession only is involved, or where a right is being asserted solely on behalf of the distributee which has been previously determined against such distributee, and the rule applicable where the interests of creditors are involved as in claims against the estate or proceedings to recover assets of the estate.

Chicago, Rock Island & Pacific Rwy. Co. v. Schendel, 270 U. S. 611, supra

At no time during the litigation have counsel for the Administrator cited any case which holds that a personal representative can challenge the succession where it has been settled in an *inter partes* proceeding, such as that leading to the Georgia judgment.

The opinion of the Supreme Court of Delaware states that the New York Administrator was not bound by the Georgia judgment because the New York Administrator is far more than the representative of a mere creditor or tax claimant and that New York's right to be heard on the question of domicile is not the result of its claim for taxes, but (R. 231):

> "... the fact that the decedent was its domiciled citizen at the time of her death; and the appellant (the New York Administrator) appointed by authority of its proper court, is its arm to gather together, in so far as is permitted by law, the personal property of the deceased, and to administer and distribute the property according to her Will and the laws of the State. Being the seat of domiciliary administration, it is not compelled to press its claim for taxes in a jurisdiction of ancillary administration."

No cases are cited in support of this statement and we have found none which do support it, but, as we have already pointed out, the authorities are to the contrary. That the State of New York recognizes no such rule will be seen from an examination of

State of Colorado v. Harbeck, 232 N. Y. 71; 133 N. E. 357, 359

Martin's Estate, 240 N. Y. Supp. 393, affirmed in 174 N. E. 753

In the *Martin* case, the decedent's domicile was admittedly in Connecticut, and a Connecticut administrator was

appointed so that the State of Connecticut might collect taxes due on the estate of its "domiciled citizen". The New York courts, however, refused to deliver the assets of the estate, which had been removed from Connecticut to New York, to the Connecticut administrator.

The Delaware Supreme Court lost sight of the fact that its first duty was to determine whether it had the right to enter upon an inquiry as to domicile if it was to give full faith and credit to the Georgia judgment. It nevertheless made that inquiry without determining the Federal question and, after making a finding of domicile in New York, proceeded to hold that the New York Administrator was entitled to the stock *because of its finding of a New York domicile for decedent*. In so doing, it failed to give to the Georgia proceedings the full faith and credit to which they are entitled.

Counsel for the Administrator see no significance in the fact that the Supreme Court of Delaware first determined the question of domicile, and then proceeded to examine the effect of the Georgia judgment. Its significance is twofold: First, in the fact that the effect to be given the Georgia judgment in no way depends upon a determination of the factual issue of domicile by the Delaware court. Second, in finding that the decedent was domiciled in New York at the time of her death the court consequently concluded that the administration in New York was general or domiciliary, thus ignoring the fact that the question of the state of domiciliary administration had already been conclusively determined as Georgia. It was thus assumed that the New York *ex parte* judgment had the same legal effect in determining the succession as the *inter partes* judgment of the Georgia court. This would have been correct had both judgments been *ex parte* as to the respective distributees thereunder.

Baker v. Baker, Eccles & Co., supra

But in view of the fact that the Georgia judgment was binding on all parties interested in the succession, this was a denial to that judgment of the "full faith and credit" to which it was entitled under the Constitution and laws of the United States.

The Georgia Judgment Determined That the Georgia Administration is Domiciliary and not Ancillary

The Georgia judgment determined that the Georgia administration was domiciliary and general and not ancillary or local. Such a judgment is conclusive where all persons interested in the distribution of the estate are parties to the judgment.

Thormann v. Frame, 176 U. S. 350
Overby v. Gordon, 177 U. S. 214
Tilt v. Kelsey, 207 U. S. 43
Burbank v. Ernst, 232 U. S. 162
Baker v. Baker, Eccles & Co., 242 U. S. 394, L. R. A. 1917C, 171
Thomas v. Morrisett, 76 Ga. 384
In Re Fischer's Estate, 118 N. J. Eq. 599; 180 Atl. 633
In Re Willett's Appeal, 50 Conn. 330

Once determined in such a proceeding the judgment determining the succession cannot be attacked in any other state. The effect of the Delaware decision is that a dissatisfied litigant in such a proceeding may go into another state, have an administrator appointed in *ex parte* proceedings, and, in defiance of and ignoring the previous adjudication, have the question of domicile litigated all over again in a contest between the two sets of representatives in a third state where property of the decedent is located.

CONCLUSION

The decision of the Delaware Supreme Court is of particular importance in view of the large number of Delaware corporations with stockholders throughout the nation. Heretofore it has been generally recognized that the appointment of an executor by a court of competent jurisdiction wherein the domicile of the decedent was determined, and in which all persons interested in the succession were before the court, vested in the personal representative the title to shares of stock owned by the decedent and enabled such personal representative to transfer a good title thereto in the course of administration. The Delaware decision strips the Georgia judgment of the protection which it has heretofore been considered that such judgments have under the full faith and credit clause of the federal constitution and, if allowed to stand, will produce hardships in the administration of decedent's estate.

It is respectfully submitted, therefore, that the judgment of the Supreme Court of Delaware should be reversed.

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